

**In the United States Patent and Trademark Office
on Appeal from the Examiner to the Board
of Patent Appeals and Interferences**

In re Application of: Hien Le
Serial No.: 10/696,817
Filing Date: 30 October 2003
Group Art Unit: 2191
Confirmation No.: 1300
Examiner: Satish Rampuria
Title: *Facilitating Software Engineering and Management in Connection
With a Software Development Project According to a Process that is
Compliant With a Qualitatively Measurable Standard*

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

Appellant respectfully submits this Reply Brief under 37 C.F.R. § 41.41(a)(1) in response to the Examiner's Answer sent 26 June 2008. Appellant maintains the final rejection of Claims 1-20 is improper and responds to the Examiner's Answer below.

Argument

In the Appeal Brief filed 17 April 2008, Appellant clearly demonstrated the allowability of independent Claims 1, 7, 13, and 19-20 over *Miller*. Appellant therefore reiterates the remarks in the Appeal Brief.

In the Response to Argument section of the Examiner's Answer, the Examiner responds to particular arguments put forward by Appellant demonstrating the allowability of independent Claims 1, 7, 13, and 19-20 over *Miller*. Below, Appellant provides additional arguments specifically addressing the remarks in the Argument section of the Examiner's Answer.

Independent Claims 1, 7, 13, and 19-20 are Allowable over *Miller*

In the Response to Argument section of the Examiner's Answer, the Examiner again asserts—incorrectly—that various steps of a Software Engineering Process Group (SEPG) project execution process in *Miller* are contents of the multiple repository system in *Miller* that can properly be considered ***first resources***, as independent Claims 1, 7, 13, and 19-20 recite. However, even assuming for the sake of argument these steps in *Miller* could properly be considered as ***specifying for each task***—which is not at all clear—*Miller* would still fail to disclose, teach, or suggest that the multiple repository system in *Miller* contains any of those steps. *Miller* merely discloses the steps as being performed by personnel of an organization. (Paragraphs 0039-40, 0045, 0062, 0092-93, and 0311).

The Examiner also again asserts—incorrectly—that the accelerated process improvement framework (APIF) multiple repository system in *Miller* can properly be considered ***a database associated with the server system and containing resources accessible to the client systems using the server system in connection with one or more software development projects***, as independent Claims 1, 7, 13, and 19-20 recite. The APIF system in *Miller* distributes documents needed for a CMM method, including instructions for implementing the CMM method and documentation to evidence actions taken in the CMM method. Even so, *Miller* still fails to disclose, teach, or suggest that these instructions and documentation can properly be considered

each and every one of the *first resources* specifically recited by independent Claims 1, 7, 13, and 19-20.

The Examiner further asserts that, even if *Miller* fails to disclose any of the *first resources* specifically recited by independent Claims 1, 7, 13, and 19-20, *Miller* anticipates independent Claims 1, 7, 13, and 19-20 under 35 U.S.C. § 102(e) because “each of [the *first resources*] merely recites non-functional description material.” The Examiner appears to be improperly conflating novelty under 35 U.S.C. § 102 with patentability under 35 U.S.C. § 101. While nonfunctional descriptive material may be grounds for a rejection under 35 U.S.C. § 101 under certain circumstances—which are not present here—anticipation under 35 U.S.C. § 102 requires “every element and limitation of the claimed invention . . . be found in a single prior art reference, arranged as in the claim.” *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). Moreover, “[t]he identical invention must be shown in as complete detail as is contained in the patent claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); M.P.E.P. ch. 2131 (Rev. 3, Aug. 2005) (quoting *Richardson*, 868 F.2d at 1236). As Applicant discusses above and in the Appeal Brief filed 17 April 2008, *Miller* does not anticipate independent Claim 1 under governing Federal Circuit case law and the M.P.E.P.

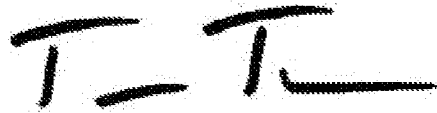
Conclusion

Appellant has demonstrated that the present invention, as claimed, complies with all statutory requirements for a U.S. patent. Therefore, Appellant respectfully requests the Board to reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

The Commissioner is hereby authorized to charge any fee due and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Appellants

A handwritten signature in black ink, appearing to read 'T-T', with a horizontal line extending from the second 'T'.

Travis W. Thomas
Reg. No. 48,667

Date: 26 August 2008

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